APPENDIX

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 25449

RAY JACKSON CRIBB,
Appellant,

versus

UNITED STATES OF AMERICA,
Appellee.

Appeal from the United States District Court for the Middle District of Georgia.

(June 21, 1968.)

Before BROWN, Chief Judge, DYER, Circuit Judge, and GARZA, District Judge.

GARZA, District Judge: Appellant appeals from his conviction by a jury on all six counts of an indictment charging him with violation of the Internal Revenue Laws.

Count One charged him with possession of an unregistered still, in violation of 26 U.S.C.A. 5179 (a), 5601 (a);

Count Two charged him with carrying on the business of a distiller without giving bond, in violation of 26 U.S.C.A. 5173, 5601 (a);

Count Three charged him with carrying on the business of a distiller with intent to defraud the United States, in violation of 26 U.S.C.A. 5602;

Count Four charged him with working at a distillery not bearing a sign, in violation of 26 U.S.C.A. 5180, 5681 (c);

Count Five charged him with possession of moonshine whiskey, in violation of 26 U.S.C.A. 5205 (a) (2), 5604 (a); and

Count Six charged him with possession of distilling apparatus and raw materials (sugar and yeast) intending to use the same in the non-tax-paid distilled spirits business, in violation of 26 U.S.C.A. 5686 (a).

Appellant attacks his conviction on the grounds that the trial court committed reversible error in failing to grant his motion for acquittal, and that the court committed reversible error in its charge to the jury.

The facts presented at his trial show that on January 30, 1967, at approximately 6:10 p.m., Alcohol and Tobacco Tax Special Investigators, working with Georgia and Florida State Agents, seized an illegal moonshine whiskey distillery in Clinch County, Georgia.

The distillery was situated in a wooded area, a considerable distance from Georgia Highway 177. A dirt road led from the highway to a house. From the house, a narrow woods road ran for approximately 480 yards, terminating at the distillery.

Approximately 200 yards from the house, the woods

road intersected with an unused road which led to Highway 441.

At the time of the raid on the distillery, there were two men who were co-indicted with the Appellant operating the still. One was working on the condenser and the other was putting sugar into one of the still pots.

The officers seized eight 1800-gallon steel tank stills, fermenting mash, miscellaneous distilling equipment, and 240 gallons of non-tax-paid whiskey contained in 5-gallon plastic jugs to which no Internal Revenue stamps were affixed. The distillery had no sign posted.

While the officers were at the distillery, another co-defendant appeared driving a pickup truck, and was arrested. His name was Parrish.

At about 8:30 p.m., an investigator for the Alcohol and Tobacco Tax Division of the Treasury Department, by the name of Kelley, left the distillery on the woods road, headed in the direction of Highway 177. At a point approximately 280 yards from the distillery he met a car with its lights on. The car stopped, backed up approximately 20 yards onto the unused road, and stopped. The Appellant got out, shook hands with the officer and identified himself.

Officer Kelley had seen through the glass of the automobile, and saw several sacks marked "Dixie Crystal Sugar" in the rear. Investigator Kelley then identified himself and placed the Appellant under arrest. The Appellant was adequately advised of his constitutional rights against self-incrimination and his right to counsel.

Officer Kelley then turned custody of the Appellant over to fellow officers who took the Appellant to the distillery.

The automobile driven by Appellant was a white 1962 Chrysler 4-door sedan. Its rear seat had been removed. There were found in the car twenty-nine 60-pound bales of Dixie Crystal Sugar and a case containing twelve 2-pound cans of yeast. There was also a strong odor of moonshine whiskey inside the car, and the automobile was equipped with a set of overload springs.

Upon arriving at the distillery the Appellant saw the co-defendant Parrish handcuffed and sitting by a tree. The Appellant told the officers that they "could turn that boy loose, he wasn't going to run." He then asked how much his bail was, and told the officers, "Let me make bond now. I know you are going to tear these up and I've got to get some more started."

Appellant's complaint that his motion for acquittal should have been granted because the evidence was insufficient to support a conviction on any of the counts in the indictment, is without merit. The evidence noted above and the statements made by the Appellant upon hs arrival at the distillery, was substantial evidence to support a guilty verdict.

There was sufficient evidence that a reasonable mind might accept as adequate to support a conclusion of guilt beyond a reasonable doubt. *Riggs v. U.S.*, 280 F.2d 949 (5 Cir., 1960).

The evidence was more than clear that the Appellant was engaged in and carried on the business of a distiller of spiritous liquors without having given bond as required by law and with the intent to defraud the United States of the tax imposed thereon, as charged in Counts Two and Three of the indictment; and that the Appellant worked

in a distillery upon which no sign was placed and kept, as charged in Count Four of the indictment.

On Counts One, Two, Three and Five, which were the felony counts in the indictment, the Appellant was sentenced to two years on each count, to run concurrently; and on Counts Four and Six, which were misdemeanor counts, he was sentenced to twelve months, to run concurrently with the sentences imposed in the felony counts, making a total of two years that he had to serve.

The Appellant's attack on his conviction on Count One, charging him with possession of the still, and his attack on Count Five, charging him with possession of certain distilled spirits and on Count Six, charging him with possession of certain property intended for use in violation of the provisions of the Internal Revenue Code, need not be passed on by us since the sentences received on these counts in the indictment were to run concurrent with the sentences imposed on the counts on which there is no question of his guilt as found by the jury.

Appellant's attack on the court's charge is three-pronged, only two of which deserve mention.

He says that the failure of the court to give a charge on circumstantial evidence was fundamental error.

Appellant did not seek such a charge, and when the charge is read as a whole we cannot say that this was fundamental error.

He also complains of the court inquiring of the jurors trying him as to their former service on juries; that since two of the jurors raised their hands and said that they had previously served, this fact set these two jurors up as persons that the other jurors had to follow because of their previous jury experience.

This contention is wholly without merit.

We have read the complete charge of the court and find it fair and fully adequate.

The conviction of the Appellant, therefore, must be

AFFIRMED.

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

OCTOBER TERM, 1967

No. 25449

D. C. Docket No. 2424—Criminal

RAY JACKSON CRIBB,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Middle District of Georgia.

Before BROWN, Chief Judge, DYER, Circuit Judge, and GARZA, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

June 21, 1968

Issued as Mandate: September 13, 1968.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 25449

RAY JACKSON CRIBB,
Appellant,

versus

UNITED STATES OF AMERICA,
Appellee.

Appeal from the United States District Court for the Middle District of Georgia.

(September 5, 1968)

Before BROWN, Chief Judge, DYER, Circuit Judge, and GARZA, District Judge.

PER CURIAM:

The petition for rehearing and for oral argument thereon, filed by the Appellant in this cause, is hereby DENIED.

CONSTITUTIONAL PROVISIONS, RULES AND STATUTES INVOLVED

U.S. Constitution, Amendment XIV, Section 1—All persons born or naturalied in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

26 U.S.C.A. 5173 (a)—Every person intending to commence or to continue the business of a distiller, bonded warehouseman, or rectifier, on filing with the Secretary or his delegate an application for registration of his plant, and before commencing or continuing such business, shall file bond in the form prescribed by the Secretary or his Delegate, conditioned that he shall faithfully comply with all the provisions of law and regulations relating to the duties and business of a distiller, bonded warehouseman, or rectifier, as the case may be (including the payment of taxes imposed by this chapter), and shall pay all penalties incurred or fines imposed on him for violation of any of the said provisions.

26 U.S.C.A. 5179 (a)—Every person having in his possession or custody, or under his control, any still or distilling apparatus set up shall register such still or apparatus with the Secretary or his delegate immediately on its being set up, by subscribing and filing wit hthe Secretary or his delegate a statement, in writing, setting forth the particular place where such still or distilling apparatus is set up, the kind of still and its capacity, the owner thereof, his

place of residence, and the purpose for which said still or distilling apparatus has been or is intended to be used (except that stills or distilling apparatus not used or intended to be used for the distillation, redistillation, or recovery of distilled spirits are not required to be registered under this section).

26 U.S.C.A. 5180—Every person engaged in distilling, bonded warehousing, rectifying, or bottling of distilled spirits shall place and keep conspicuously on the outside of his place of business a sign showing the name of such person and denoting the business, or businesses, in which engaged. The sign required by this subsection shall be in such form and contain such information as the Secretary or his delegate shall by regulations prescribe.

26 U.S.C.A. 5205 (a) (2)—No person shall transport, possess, buy, sell, or transfer any distilled spirits, unless the immediate container thereof is stamped by a stamp evidencing the determination of the tax or indicating compliance with the provisions of this chapter. The provisions of this paragraph shall not apply to—

(A) distilled spirits, lawfully withdrawn from bond, placed in containers for immediate consumption on the premises or for preparation for such consumption;

(B) distilled spirits in bond or in customs custody;

(C) distilled spirits, lawfully withdrawn from bond, in immediate containers stamped under other provisions of internal revenue or customs law or regulations issued pursuant thereto;

(D) distilled spirits, lawfully withdrawn from bond, in actual process of rectification, blending, or bottling, or in actual use in processes of manufacture;

(E) distilled spirits on which no internal revenue tax is required to be paid;

(F) distilled spirits lawfully withdrawn from bond and not intended for sale or for use in the manufacture or production of any article intended for sale; or

(G) any regularly established common carrier receiving, transporting, delivering, or holding for transportation or delivery distilled spirits in the ordinary course of its business as a common carrier.

26 U.S.C.A. 5601 (a)—Any person who has in his possession or custody, or under his control, any still or distilling apparatus set up which is not registered, as required by section 5179 (a); shall be fined not more than $10,000.00, or imprisoned not more than 5 years, or both for each such offense.

26 U.S.C.A. 5602—whenever any person engaged in or carrying on the business of a distiller defrauds, attempts to defraud, or engages in such business with intent to defraud the United States of the tax on the spirits distilled by him, or of any part thereof, he shall be fined not more than $10,000, or imprisoned not more than 5 years, or both. No discontinuance or nolle prosequi of any prosecution under this section shall be allowed without the permission in writing of the Attorney General.

26 U.S.C.A. 5604 (a) (1)—Any person who shall—(1) transport, possess, buy, sell, or transfer any distilled spirits, required to be stamped under the provisions of section 5205 (a) (2), unless the immediate container thereof has affixed thereto a stamp as required by such section; shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, for each such offense.

26 U.S.C.A. 5681 (c)—Every person who works in any distillery, or in any rectifying, distilled spirits bottling or wholesale liquor establishment, on which no sign required by section 5115 (a) is placed or kept, and every person who knowingly receives at, or carries or conveys any distilled spirits to or from any such distillery, or to or from any such rectifying, distilled spirits bottling, or wholesale lquor establishment, or who knowingly carries or delivers any grain, molasses, or other raw material to any distillery on which said sign is not placed and kept, shall forfeit all vehicles, aircraft, or vessels used in carrying or conveying such property and shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

26 U.S.C.A. 5686 (a)—It shall be unlawful to have or possess any liquor or property intended for use in violating any provision of this chapter or regulations issued pursuant thereto, or which has been so used, and every person so having or possessing or using such liquor or property, shall be fined not more than $5,000, or imprisoned not more than 1 year, or both.

18 U.S.C.A. 3231—The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

Rule 18, Fed. Rules of Criminal Procedure—Except as otherwise permitted by statute or by these rules, the prosecution shall be had in a diistrict in which the offense was committed, but if the district consists of two or more divisions the trial shall be had in a division on which the offense was committed.

CERTIFICATE OF SERVICE

I, J. Sewell Elliott, do certify that I have on the date shown below served the within petition (1) by mail upon the Solicitor General, Department of Justice, Washington, D. C. 20530 by depositing same in the United States Post Office with sufficient air mail postage prepaid, addressed to him at his post office address in accordance with Rule 33, Supreme Court Rules, and (2) upon the Hon. Floyd M. Buford, United States Attorney, Middle District of Georgia, Post Office Box V, Macon, Georgia 31202, the attorney of record who represented the United States in the Court whose judgment is sought to be reviewed, by delivering same at the office of said counsel of record, in accordance with Rule 33, Supreme Court Rules.

THIS_____day of October, 1968.

J. SEWELL ELLIOTT
Suite 506 Persons Bldg.
Macon, Georgia 31201
Counsel of record for petitioner